

MT LEGISLATIVE HISTORY

Chapter 178 1987

Bill (H) 80 S _____

Original bill & hist. ☒ C

H. Committee on Business & Labor

S. Committee on Business & Industry

Hearing Date(s) Jan 19 ☒ C

Hearing Date(s) Feb 10 ☒ C

Jan 20 ☒ C

Feb 13 ☒ C

Jan 22 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Jan 22 ☒ C

Feb 13 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE FINAL STATUS

4/10 TRANSMITTED TO GOVERNOR
 4/15 SIGNED BY GOVERNOR
 CHAPTER NUMBER 485 EFFECTIVE DATE: 10/01/87

HB 79 INTRODUCED BY BROWN, J.
 ALLOW DEPARTMENT OF REVENUE TO REQUIRE HEALTH
 COVERAGE WHEN CHILD SUPPORT IS BEING ENFORCED
 BY REQUEST OF DEPARTMENT OF REVENUE

1/05 INTRODUCED
 1/05 REFERRED TO JUDICIARY
 1/05 FISCAL NOTE REQUESTED
 1/12 FISCAL NOTE RECEIVED
 1/13 HEARING
 1/23 COMMITTEE REPORT--BILL PASSED AS AMENDED
 1/26 2ND READING PASSED 92 6
 1/27 3RD READING PASSED 93 6

TRANSMITTED TO SENATE
 1/28 REFERRED TO JUDICIARY
 2/12 HEARING
 3/05 COMMITTEE REPORT--BILL CONCURRED
 3/09 2ND READING CONCURRED 50 0
 3/11 3RD READING CONCURRED 47 3

RETURNED TO HOUSE
 3/14 SIGNED BY SPEAKER
 3/14 SIGNED BY PRESIDENT
 3/16 TRANSMITTED TO GOVERNOR
 3/19 SIGNED BY GOVERNOR
 CHAPTER NUMBER 130 EFFECTIVE DATE: 10/01/87

HB 80 INTRODUCED BY BROWN, J.
 NEWSPAPER CARRIER OR CORRESPONDENT NEED NOT HAVE
 WORKERS' COMPENSATION

1/05 INTRODUCED
 1/05 REFERRED TO BUSINESS & LABOR
 1/19 HEARING
 1/22 COMMITTEE REPORT--BILL PASSED AS AMENDED
 1/24 2ND READING PASSED 85 10
 1/26 3RD READING PASSED 71 29

TRANSMITTED TO SENATE
 1/27 REFERRED TO BUSINESS & INDUSTRY
 2/10 HEARING
 2/14 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 2/17 2ND READING CONCURRED 47 3
 2/19 3RD READING CONCURRED 43 7

RETURNED TO HOUSE WITH AMENDMENTS
 3/11 2ND READING AMENDMENTS CONCURRED 81 10
 3/12 3RD READING AMENDMENTS CONCURRED 86 11
 3/16 SIGNED BY SPEAKER
 3/17 SIGNED BY PRESIDENT

3/18 TRANSMITTED TO GOVERNOR
 3/22 SIGNED BY GOVERNOR
 CHAPTER NUMBER 148 EFFECTIVE DATE: 10/01/87

HB 81 INTRODUCED BY BROWN, J.
 CLARIFY THAT ADMINISTRATIVE SUPPORT ORDER OF

HOUSE BILL NO. 80

INTRODUCED BY J. BROWN

IN THE HOUSE

JANUARY 5, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
JANUARY 22, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 23, 1987	PRINTING REPORT.
JANUARY 24, 1987	SECOND READING, DO PASS.
JANUARY 26, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 71; NOES, 29.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 27, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
FEBRUARY 14, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
FEBRUARY 17, 1987	SECOND READING, CONCURRED IN.
FEBRUARY 19, 1987	THIRD READING, CONCURRED IN. AYES, 43; NOES, 7.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 11, 1987	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.

MARCH 12, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 HOUSE BILL NO. 80
2 INTRODUCED BY J. BROWN
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT AN
5 INDEPENDENT CONTRACTOR CONTRACTING WITH A NEWSPAPER AS A
6 NEWSPAPER CARRIER OR PART-TIME CORRESPONDENT NEED NOT ELECT
7 TO BE BOUND PERSONALLY AND INDIVIDUALLY BY A WORKERS'
8 COMPENSATION PLAN; AND AMENDING SECTION 39-71-401, MCA."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Section 39-71-401, MCA, is amended to read:
12 "39-71-401. Employments covered and employments
13 exempted. (1) Except as provided in subsection (2) of this
14 section, the Workers' Compensation Act applies to all
15 employers as defined in 39-71-117 and to all employees as
16 defined in 39-71-118. An employer who has any employee in
17 service under any appointment or contract of hire, expressed
18 or implied, oral or written, shall elect to be bound by the
19 provisions of compensation plan No. 1, 2, or 3. Every
20 employee whose employer is bound by the Workers'
21 Compensation Act is subject to and bound by the compensation
22 plan that has been elected by the employer.
23 (2) Unless the employer elects coverage for these
24 employments under this chapter and an insurer allows such an
25 election, the Workers' Compensation Act does not apply to

1 any of the following employments:
2 (a) household and domestic employment;
3 (b) casual employment as defined in 39-71-116(3)
4 except employment of a volunteer under 67-2-105;
5 (c) employment of members of an employer's family
6 dwelling in the employer's household;
7 (d) employment of sole proprietors or working members
8 of a partnership other than those who consider themselves or
9 hold themselves out as independent contractors and who are
10 not contracting with a newspaper as a newspaper carrier or
11 part-time correspondent, or for agricultural services to be
12 performed on a farm or ranch, or for broker or salesman
13 services performed under a license issued by the board of
14 realty regulation, or for services as a direct seller
15 engaged in the sale of consumer products to customers
16 primarily in the home;
17 (e) employment for which a rule of liability for
18 injury, occupational disease, or death is provided under the
19 laws of the United States;
20 (f) any person performing services in return for aid
21 or sustenance only, except employment of a volunteer under
22 67-2-105;
23 (g) employment with any railroad engaged in interstate
24 commerce, except that railroad construction work shall be
25 included in and subject to the provisions of this chapter;

commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter;

(h) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(I) ANY PERSON PERFORMING SERVICES AS A NEWSPAPER CARRIER OR FREE-LANCE CORRESPONDENT IF THE PERSON PERFORMING THE SERVICES OR A PARENT OR GUARDIAN OF THE PERSON PERFORMING THE SERVICES IN THE CASE OF A MINOR HAS ACKNOWLEDGED IN WRITING THAT THE PERSON PERFORMING THE SERVICES AND THE SERVICES ARE NOT COVERED. AS USED IN THIS SUBSECTION "FREE-LANCE CORRESPONDENT" IS A PERSON WHO SUBMITS ARTICLES OR PHOTOGRAPHS FOR PUBLICATION AND IS PAID BY THE ARTICLE OR BY THE PHOTOGRAPH. AS USED IN THIS SUBSECTION "NEWSPAPER CARRIER":

(I) IS A PERSON WHO PROVIDES A NEWSPAPER WITH THE SERVICE OF DELIVERING NEWSPAPERS SINGLY OR IN BUNDLES, BUT

(II) DOES NOT INCLUDE AN EMPLOYEE OF THE PAPER WHO INCIDENTALLY TO HIS MAIN DUTIES, CARRIES OR DELIVERS PAPERS.

(3) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor and who is not contracting ~~with--a newspaper-as-a-newspaper-carrier-or-part-time-correspondent,~~ or for agricultural services to be performed on a farm or

ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the

STATUS SHEET

50TH LEGISLATIVE SESSION

BUSINESS AND LABOR

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NO CONCURRED IN AMENDED DATE
22	1/8/87	1/8/87	1/8/87			1/8/87					
30	1/7/87	1/7/87	1/9/87			1/9/87					
31	1/9/87	1/9/87	1/16/87			1/16/87					
34	1/6/87	1/6/87	1/6/87	1/6/87							
41	1/7/87	1/7/87	1/7/87			1/7/87					
44	1/6/87	1/6/87	1/6/87				1/6/87				
51	1/13/87	1/13/87	1/14/87	1/14/87							
52	1/13/87	1/13/87	tabled 2/11/87								
54	1/02/87	2/16/87	tabled 2/16/87								
66	1/5/87	2/19/87	2/20/87			2/20/87					
67	1/5/87	1/23/87	1/28/87			1/28/87					
68	1/6/87	1/9/87	1/16/87			1/16/87					
80	1/12/87	1/19/87	1/22/87			1/22/87					
94	1/12/87	1/14/87	2/10/87			2/10/87					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

January 19, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on January 19, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 80 - Newspaper Carrier or Correspondent Need Not Have Workers Compensation sponsored by Rep. Jan Brown. Rep. Brown stated that House Bill 80 exempts newspaper carrier and part-time newspaper correspondents from workers' compensation coverage.

PROPONENTS

Les Loble II, representing Lee Enterprises, Inc. Mr. Loble stated that he is submitting an amendment to the bill that makes the implied assumption expressed that the person will not be covered by workers compensation insurance, and if the person is a minor that a parent or guardian must make the written acknowledgement. He said carriers are not covered now, and this will forestall the possibility of increased costs being imposed on the papers. He also pointed out that he suspects that when the cost of the coverage for the full time adult employees are imposed for the services of part time and independent carriers, which now are mostly the young people, the papers will conclude they might as well hire adults, and the 12-15 year olds will lose the money making opportunity. He stated that Montana's daily newspapers hire about 125 to 150 and the weekly newspapers 400 to 700 correspondents; many of which are homemakers selling their columns and photographic services to several sources, often in more than one state. He commented that there is no set standard of payment for these people throughout the industry and would add another administrative problem to the entire process unless they have an exempt status. Exhibit No. 1.

He stated that the following people that were going to testify as proponents besides himself were: George Moore, Montana Press Association; Richard Wesnick, Billings Gazette; Bruce Smith, publisher of the Bozeman Chronicle; and Rick Foote, editor of the Montana Standard. He also stated that others that wanted to be listed as proponents and would be available to answer questions were: Chuck Vincent, circulation manager of the Billings Gazette; Sandra Grimes,

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acting circulation manager of the Missoulian; Mike Voeller, Independent Record, Helena; Jim Rickman, circulation manager of the Independent Record.

George Moore, Executive Director, Montana Press Association. Mr. Moore stated that the the reason they were seeking exemption from the workers compensation insurance was fear that possibly in the future a government administrator would decide that these independent contractors, the carriers and correspondents, would be transformed into employees. He commented that such a change would created disruption within the industry and could force some of the smaller newspapers to close; they are seeking the assurance that what is lawful business conduct today will continue to be lawful business conduct in the future. He said the relationship between the newspapers and the carriers involves the parents by requiring them to co-sign the contracts, so the parents are aware of the contracts and are kept aware of the work situation. Exhibits No. 2 and 3.

Richard Wesnick, editor of the Billings Gazette. Mr. Wesnick pointed out that a newspaper correspondent is a free lance writer, and there is no reason why a person writing a column, a housewife, a practicing veterinarian, or a retired newspaper editor, should be covered by workers compensation. He said each month the Billings Gazette buys columns and stores them on free lance basis, and without an exemption for these correspondents, he and other editors in Montana would be forced to pay workers compensation premiums for these people who are not employees.

Bruce Smith, publisher of the Bozeman Daily Chronicle. Mr. Smith stated that when they contract with a carrier, a representative of the newspaper visits with the family and are given the opportunity to purchase an accident insurance policy that covers them not only when they deliver the papers, but provides protection 24 hours a day. He said this plan is similar to what the other papers in the state provide, and if the carrier declines the insurance, the newspaper purchases the policy to cover the carrier. He commented that should the newspapers not gain the exemption from workers compensation fund, it would affect how they deal with their carriers and might force them to begin looking for alternate delivery methods. Exhibit No. 4.

Rick Foote, editor of the Montana Standard. Mr. Foote stated they have correspondents throughout southwestern Montana, and have an individual who is a part time editorial cartoonist. He stated that these people are independent contractors, the paper has no control over them; they are free to deal with other agencies or papers if they wish and are paid on submission and acceptance of their material.

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Chuck Vincent, distribution director of the Billings Gazette. Mr. Vincent expressed support of the bill.

Sandra Grimes, circulation manager of the Missoulian. Ms. Grimes expressed support of the bill.

Jim Rickman, Independent Record, Helena. Mr. Rickman expressed support of the bill.

OPPONENTS

Jim Murry, Executive Secretary, Montana State AFL-CIO. Mr. Murry stated that they have a newspaper guild affiliated with them that has jurisdiction covering the stringers for the newspapers, but the newspaper carriers do not have anyone to represent them. Mr. Murry stated that they are not questioning their pay scale, but the carriers needed protection from the hazards they face on their routes. He said the newspaper stringers are independent contractors, but the papers are testifying the carriers are also. He suggested that the newspapers be treated the same way that other employers are treated in the state and not given special consideration to simply improve their profit picture.

Hiram Shaw, Division of Workers Compensation, Department of Labor and Industry. Mr. Shaw stated that newspaper carriers have historically been classified as employees by both the division and the courts. He said the Governor's Advisory Council studied the independent contractor coverage and did not recommend exemption for newspaper carriers or part time correspondents. He commented that independent contractors must be free from control of the employer and engaged in independently established occupations, and since the carriers or the correspondents do not meet these definitions, the Department recommends that they not be exempted from protection of the workers compensation coverage. Mr. Shaw distributed information and a copy of an application that a carrier or correspondent who is considered an independent contractor is entitled to make, and the Division would consider that type of exemption. Exhibit No. 5 and 6.

QUESTIONS

Rep. Swysgood asked Mr. Loble he would object to inserting the word "free lance" to replace "part time" in the language in the bill since they are referred to as free lance writers. Mr. Loble responded that he preferred to leave it as "part time". He felt that it was important that the part time provision be there as a protection for the

correspondent so it was clear that it was a part time and not a full time matter.

Rep. Bachini asked if the carriers pay \$1 per month for their contribution for the health coverage. Mr. Loble responded that was what it was for the Independent Record. Rep. Bachini then asked what each of the newspapers charged the carriers for the health coverage. Mr. Vincent responded that the supplemental insurance for the carriers at the Billings Gazette was \$3 per month; Mr. Smith responded that for the Bozeman Chronicle it was \$3 per month also.

Rep. Glaser asked which of the three plans the majority of the newspapers use in the state of Montana, plan 1, 2, or 3. Mr. Shaw responded that none of the newspapers are under plan 1, and doesn't know if the majority are under plan 2 or 3.

Rep. Glaser asked what kind of health coverage the newspaper carrier gets for \$1. Mr. Vincent responded that at the Independent Record the coverage consists of a hospital benefit of up to \$35 per day, \$85 for various expenses, like anesthesia, x-rays, and ambulance expense benefits up to \$50, disability benefits of \$8 a week, then there is some medical and dental expense benefits in about that amount.

Rep. Glaser asked who decides when the newspaper is delivered, where the newspapers are to be delivered, and who determines what the newspaper will be sold for at the retail level. Mr. Loble responded that the newspaper decided when the paper is to be delivered, and the carrier decided who it is to be delivered to as he goes out and solicits the business, and also what to charge for the paper, that he can sell them at a discount or at a premium price.

Rep. Glaser asked Mr. Loble if they had a circulation department at the newspaper. Mr. Loble responded they did, but when the carrier gets a route, he gets a list of subscribers on his route.

Rep. Glaser asked who determines when the newspaper is to be paid for. Mr. Loble responded that was up to the carrier, if he didn't collect for the paper, he didn't get paid.

Rep. Glaser asked if the newspaper set the policy on any of the four matters discussed. Mr. Loble said they did not.

Rep. Simon asked what was the definition of a correspondent, was there a clear definition. Mr. Wesnick responded that, from his newspaper experience, correspondents, stringers, and free lance writers were people that have some expertise or interest in a given subject that write a column or take

photographs of an event that has happened, call the newspaper to tell them about it and ask if they want the story or photographs. He said the newspaper then may or may not buy the material, and if it does, mails them a check for the story or the photograph. He stated that they may do a variety of other things or write a column for more than one newspaper at one time; the question then is who is to cover these people under workers compensation.

Rep. Simon asked Mr. Wesnick if the Billings Gazette is currently paying for workers compensation coverage for their carriers and part time correspondents. Mr. Wesnick responded they were not.

Rep. Simon asked Mr. Smith if the Bozeman Chronicle paid workers compensation coverage on their part time correspondents and the carriers. Mr. Smith responded they do not pay workers compensation for their carriers, but they do have two or three people who are correspondents whom they have enough control over and deem as their employees, and they do pay workers compensation for them. He said they do not pay workers compensation on the other correspondents that do not contribute on a regular basis.

Rep. Simon asked Mr. Shaw if every newspaper carrier in the state and every substitute that works for them has to fill out the application for the independent contractor exemption in order to be exempt from workers compensation. Mr. Shaw said that was correct.

Rep. Wallin asked if this law was enforceable. Mr. Shaw responded that the basic concern that the Division of Workers Compensation had was whether or not individuals are covered when they are injured; unless the individuals are specifically exempt, they must be covered. He said that the Division believes that if there is sufficient proof that carriers and part time correspondents are to be treated as an exempt class they should complete the application. Rep. Wallin asked who decided that, the Division or the court. Mr. Shaw responded that the initial decision would be through the Division, but it could be appealed.

Rep. Pavlovich asked if the adult carrier gets paid more than the young carriers. Mr. Loble responded that they earn the same, the difference of what they buy the newspaper and what they sell it for.

Rep. Swysgood asked Mr. Foote of the Montana Standard if he would object to have the definition of "free lance" inserted in place of "part time" in the language of the bill. Mr. Foote responded he had no objection.

Rep. Thomas stated that the definition of part time and free lance should be clarified.

CLOSING

Rep. Brown stated that there were some gray areas in the bill and hoped the committee would allow them to work on the definitions and address the problems. She stated that there were two important factors involved; that young people were able to work as paper carriers, and if the newspapers feel they can't afford to hire them, they would lose. She said that profits the newspapers made was mentioned, but if the newspaper's costs increase, then the advertising costs of the small businesses would increase and they couldn't afford to advertise which would hurt them.

HOUSE BILL NO. 133 - Make Consistent Certain Terms in Montana Alcoholic Beverage Code sponsored by Rep. Melvin Williams. Rep. Williams stated that this bill clarifies the terms throughout the Montana Alcoholic Beverage Codes and makes them consistent. He said that passage of the bill would not change the Department of Revenue interpretation of the law as it exists at the present time.

PROPONENTS

Gary Blewett, Administrator, Liquor Division, Department of Revenue. Mr. Blewett stated that a lot of sections in the Alcoholic Beverage Code would be affected by the changes, but a limited number of terms would be changed. He said the bill attempts to clean up the terminology in about 98 places in the Code so that the Department does not have to repeatedly litigate the intention of the law. Exhibit No. 1.

Bob Durkee, lobbyist for the Montana Tavern Association. Mr. Durkee stated that they support the bill and have a minor amendment. He suggested inserting the word "annually" on lines 23 and 24, page 40 of the bill which reads, "the fee for a one-time all beverage license to a public airport shall be \$800...". He said the city loses on a one-time fee because they are allowed to charge by the base of the state fee, therefore, every year they lose revenue.

OPPONENTS

Roger Tippy, representing the Beer and Wine Wholesalers. Mr. Tippy requested a coordination clause amendment at the end of the bill. He said that the bill makes a number of amendments to the Alcoholic Beverage Code that perpetuates the dual wine distribution system in the different sections. He commented that the dual wine system is a parallel system of bringing the table wine to the state which is run into

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date JANUARY 19, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

January 19, 1987

EXHIBIT
DATE 1/19/87
HB 80

Statement in Support of HB 80 by Jan Brown

Mr. Chairman, members of the committee, my name is Lester H. Loble, II. I represent Lee Enterprises, Inc. I am asking your support for HB 80 and a do pass recommendation from the committee.

HB 80 would exempt newspaper carriers and part-time correspondents from workers' compensation coverage. In previous sessions of the legislature, bills have been introduced which would have deleted the requirement that carriers and part-time correspondents apply for an exemption as an independent contractor. The implied assumption behind these bills was that these two employments are performed by independent contractors. That assumption is correct. This session we ask that it be made express rather than left unstated. The bill before you, though, is identical to last session's. Accordingly, it needs to be amended. Our proposed amendment does two things: it makes the implied assumption express and requires written acknowledgement that the person will not be covered by workers' compensation insurance. If the person is a minor then a parent or guardian must make the acknowledgement. Accordingly, the person or his parent can decide whether or not he or she should be a carrier or part-time correspondent. I have prepared an amendment for the committee's use and a copy of the bill with the amendments shown.

I am sure that you have all noticed that the opportunities for part-time jobs for the 12-15 year old set have dwindled over the years. Not so long ago, after school and on Saturdays, kids on bikes were delivering for drugstores, for Western Union, or as messengers for banks and other businesses. No longer. Now carry-

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ing newspapers is one of the few part-time money making opportunities available to 12-15 year-olds.

Carriers buy their papers at wholesale and sell them at retail. They deduct their expenses such as rubber bands, plastic covers, hiring of substitutes when they are sick or on vacation, and keep what is left--their profit. They each individually service their customers and are responsible for collection of moneys owed them.

For many youngsters, this is their earliest first-hand experience with the free enterprise system. Many adults in this room--including members of this committee, no doubt--had experience with this example of how an independent contractor and independent business person operates.

There are 2,200 carriers contracting with Montana papers, 129 here in Helena, 731 in Billings and most of them are boys and girls in the 12-15 age bracket. Each carrier has a substitute; if we include moms, dads, brothers and sisters who are occasionally pressed into service there could easily be 10,000 people delivering papers at one time or another during a year.

Until very recently, the question of workers' compensation coverage was never even considered. It was "obvious" that carriers were not covered. The Montana Supreme Court has changed all that. Its expansive view of the reach of the workers' compensation laws has expanded the State Plan into bankruptcy. The Administration has a 100 page bill which attempts to reverse those court decisions. Prudence dictates that the law be crystal-clear for private business as well as for the state.

It is important that you understand that this bill will not decrease current costs of operation of newspapers. Carriers are

DATE 1/19/77
HB 80

not now covered. It will forestall the possibility of increased costs being imposed on the papers--in the case of the Montana dailies about \$200,000.00 per year.

Other states have "protected" carriers by mandating coverage. I'm not privy to the thoughts of the publishers in those states, but I suspect that when the cost of fringes for full-time adult employees was imposed for the services of part-time and cussedly independent youngsters they concluded they might as well hire adults. You can go to other states and watch residential delivery of papers, but don't look for 14 year old boys and girls on their bikes. Watch for the pickup with the automatic newspaper thrower. The driver loads up the catapult with 50-60 papers and drives down the middle of the street firing them left and right in the general direction of the subscribers' homes. The papers contract with "Newspaper Delivery, Incorporated" and let it (or them) worry about workers' compensation coverage and other payroll add-ons. The kids lose the money-making opportunity.

The case for the part-time correspondent exemption is also strong. Montana's 11 dailies have between 125 and 150 correspondents; the weeklies 500-700. Many of these are homemakers selling their writing and photographic services to several sources; often in more than one state. There is no set standard of payment for those people throughout the industry, which would add another administrative nightmare to the entire process unless they have exempt status.

We request a "DO PASS" recommendation from the Committee.

Thank you.

January 19, 1987

HB 80
by Jan Brown

Witnesses:

Lester H. Loble, II--Lee Enterprises, Inc.

George Moore--Montana Press Association

Dick Wesnick--Editor, Billings Gazette

Bruce Smith--Publisher, Bozeman Chronicle

Rick Foote--Editor, Montana Standard

Chuck Vincent--Circulation Manager, Billings Gazette

Sandra Grimes--Acting Circulation Manager, Missoulian

Mike Voeller--Editorial Page Editor, Helena Independent Record

Jim Rickman--Circulation Manager, Helena Independent Record

HOUSE BILL NO. 80

INTRODUCED BY J. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT ~~AN~~
~~INDEPENDENT CONTRACTOR CONTRACTING WITH A NEWSPAPER AS A~~
NEWSPAPER CARRIER OR PART-TIME CORRESPONDENT NEED NOT ELECT
TO BE BOUND PERSONALLY AND INDIVIDUALLY BY A WORKERS'
COMPENSATION PLAN; AND AMENDING SECTION 39-71-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments
exempted. (1) Except as provided in subsection (2) of this
section, the Workers' Compensation Act applies to all
employers as defined in 39-71-117 and to all employees as
defined in 39-71-118. An employer who has any employee in
service under any appointment or contract, of hire, expressed
or implied, oral or written, shall elect to be bound by the
provisions of compensation plan No. 1, 2, or 3. Every
employee whose employer is bound by the Workers'
Compensation Act is subject to and bound by the compensation
plan that has been elected by the employer.

(2) Unless the employer elects coverage for these
employments under this chapter and an insurer allows such an
election, the Workers' Compensation Act does not apply to

any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116(3)
except employment of a volunteer under 67-2-105;
- (c) employment of members of an employer's family
dwelling in the employer's household;
- (d) employment of sole proprietors or working members
of a partnership other than those who consider themselves or
hold themselves out as independent contractors and who are
not contracting ~~with a newspaper as a newspaper carrier or~~
~~part-time correspondent, or~~ for agricultural services to be
performed on a farm or ranch, or for broker or salesman
services performed under a license issued by the board of
realty regulation, or for services as a direct seller
engaged in the sale of consumer products to customers
primarily in the home;
- (e) employment for which a rule of liability for
injury, occupational disease, or death is provided under the
laws of the United States;
- (f) any person performing services in return for aid
or sustenance only, except employment of a volunteer under
67-2-105;
- (g) employment with any railroad engaged in interstate
commerce, except that railroad construction work shall be
included in and subject to the provisions of this chapter;

FILED
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HB 80

(1) any person performing services as a newspaper carrier or part-time correspondent and the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered."

LC 3344/31

(2) employment as an official, including a timer, referee, or judge, at a school sporting athletic event, unless the person is otherwise employed by a school division.

(3) A sole proprietor or working member of a partnership who holds himself out or considers himself as independent contractor and who is not contracting with any person for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct salesperson engaged in the sale of consumer products to customers primarily in the home and sold to be owned personally and individually by the provisions of compensation plan No. 1, 2, or 3, but do not apply to the division for an exemption from the workers' compensation act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(4) Each employer shall post a sign in the workplace at the location where notices to employers are normally

posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$10 fine for each citation."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

-END-

BEST COPY
AVAILABLE

COMMITTEE ON BUSINESS AND LABOR

Mr. Chairman, We your Committee on Business and Labor, amend HB 80 by Jan Brown, as follows:

1. Page 1, lines 4-5
Strike: "AN INDEPENDENT CONTRACTOR CONTRACTING WITH A NEWSPAPER AS"
2. Page 2, lines 10-11
Strike: "with a newspaper as a newspaper carrier or part-time correspondent, or"
3. Page 3, following line 4
Add a new subsection: "(i) any person performing services as a newspaper carrier or part-time correspondent and the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered."
4. Page 3, lines 7-9
Strike: "with a newspaper as a newspaper carrier or part-time correspondent, or"

And as so amended that the bill DO PASS.

Dated this _____ of January, 1987.

Chairman, Business and Labor Committee

MISTER CHAIRMAN, MEMBERS OF THE COMMITTEE.

MY NAME IS GEORGE MOORE, AND I'M EXECUTIVE DIRECTOR OF THE MONTANA PRESS ASSOCIATION. MY ORGANIZATION REPRESENTS 68 WEEKLY NEWSPAPERS AND ALL 11 DAILY NEWSPAPERS IN THE STATE OF MONTANA.

I SHOULD BEGIN BY NOTING THAT THE NEWSPAPER COMMUNITY OF THIS STATE STRONGLY SUPPORTS HOUSE BILL 80 AS LES LOBLE HAS PRESENTED IT TO YOU.

I WOULD LIKE, NOW, TO CLARIFY WHY WE SEEK THIS CHANGE IN THE WORKERS COMPENSATION ACT.

WE ARE MOTIVATED, SAD TO SAY, PRIMARILY BY FEAR ... FEAR THAT SOMEWHERE DOWN THE ROAD, PERHAPS WITHIN THE NEXT TWO YEARS, SOME GOVERNMENT ADMINISTRATOR OR SOME JUDGE SOMEWHERE WILL SUDDENLY DECIDE THAT THESE INDEPENDENT CONTRACTORS -- OUR NEWSPAPER CARRIERS AND CORRESPONDENTS -- HAVE MAGICALLY BEEN TRANSFORMED INTO EMPLOYEES.

SUCH A CHANGE WOULD CREATE PROFOUND DISRUPTION WITHIN OUR INDUSTRY, AND IT COULD EVEN FORCE SOME OF OUR SMALLER NEWSPAPERS -- PARTICULARLY WEEKLY NEWSPAPERS -- TO CLOSE THEIR DOORS FOREVER.

I DON'T WANT THAT TO HAPPEN, AND I'M SURE YOU DON'T, EITHER.

ALL WE ARE SEEKING IS A REASONABLE ASSURANCE THAT WHAT IS LAWFUL BUSINESS CONDUCT TODAY WILL CONTINUE TO BE LAWFUL BUSINESS CONDUCT FOR THE FORESEEABLE FUTURE.

I SHOULD POINT OUT, NOW, THAT THE RELATIONSHIP BETWEEN OUR NEWSPAPERS AND OUR CARRIERS ... AND HERE I'M REFERRING PRIMARILY TO YOUNG PEOPLE ... IS NOT WITHOUT THIRD-PARTY SUPERVISION.

YOU SEE, WE ALSO INVOLVE THE PARENTS IN THE RELATIONSHIP BY REQUIRING THEM TO CO-SIGN THE CARRIER CONTRACTS. THE PARENTS, THEN, ARE WELL AWARE OF THE TERMS OF THE CONTRACT. FURTHERMORE, THEY ARE WELL AWARE OF THE WORK SITUATION, AND THEY ARE KEPT AWARE OF IT BY VIRTUE OF THEIR DAY-TO-DAY CONTACT WITH THEIR YOUNG CARRIER ... THEIR YOUNG BUSINESS PERSON, IF YOU WILL.

THE RELATIONSHIP BETWEEN THE CARRIERS AND OUR NEWSPAPERS, THEN, INVOLVES PARENTS, AND QUITE FRANKLY, IT SEEMS ABSURD TO THINK THAT THE STATE MIGHT COME ALONG IN A YEAR OR TWO AND INJECT ITSELF INTO THAT RELATIONSHIP ... ONE THAT HAS NOT ONLY THE APPROVAL, BUT ALSO THE ENDORSEMENT, OF THE PARENTS.

IN CONCLUSION, WE ASK THAT REASON PREVAIL IN THIS INSTANCE AND THAT YOU APPROVE THE AMENDMENT WE OFFER TODAY ON BEHALF OF THE WEEKLY AND DAILY NEWSPAPERS OF MONTANA.

THANK YOU.

Testimony of George W. Moore, executive director of the Montana Press Association. Jan. 19, 1987.

Carrier Contract

EXHIBIT- 3

DATE 1/19/87

HB 80

THIS AGREEMENT made and entered into this _____ day of _____, 19____, between LEE ENTERPRISES, INCORPORATED, hereinafter referred to as "Company," and _____

address _____ city _____ state _____ hereinafter referred to as "Contractor."

1. The Company gives the Contractor, subject to the terms of this agreement, the right to sell and deliver the daily, INDEPENDENT RECORD within the territory included in the Company's Route Number _____ according to the Circulation Department's official route boundaries.

2. The Contractor shall receive a list of present subscribers and the Contractor agrees upon request of the Company to submit a correct copy of all subscribers to whom papers are being delivered.

3. The Company shall sell and deliver to the Contractor at a designated point as soon as practicable after publication each day as many copies of the INDEPENDENT RECORD as the Contractor shall order. The bundle of newspapers, wrappers and ties shall become the property of the Contractor upon delivery to the distribution point.

4. The Contractor will be entitled to all profits and will be liable for all losses resulting from the sales and delivery of newspapers sold to the Contractor. The net profit to the Contractor shall be based solely upon the difference between the purchase price of the newspapers delivered and sold. The Company shall not pay or be liable to the Contractor for any other compensation of any type or kind.

5. The Contractor agrees to pay the Company by the 10th of the month for newspapers purchased by him or her. Such payment may be made by cash, check or money order.

6. The Contractor will maintain with the Company a bond account in the amount of \$_____. This amount may be deposited at one time, but in no case in amounts of less than \$_____ per month until the required balance is obtained. Accounts shall earn interest at a rate and frequency established by the Company. Once the minimum balance is reached, the Contractor may at his or her option continue monthly deposits into the bond account in the same amount set forth above and earn interest on these additional amounts at the same rate as the required minimum balance. After proper authority is received, amounts in addition to the minimum balance may be withdrawn by the Contractor. Upon termination of this contract by either party, the bond account balance (including interest) less any amounts owing to the Company by the Contractor will be refunded within forty-five (45) days of termination.

7. The Contractor agrees to provide door delivery and satisfactory service to his or her customers each day. The Contractor will work directly with his or her customers for delivery of missed copies.

8. The Contractor shall sell and deliver said newspapers according to his or her own means and methods, and he or she shall not be subject to control or supervision of the Company except as to the result obtained. Any mode of transportation which the Contractor uses must be furnished at his or her own expense and the Company shall not be held liable in any manner for expenses or damages arising out of the use or operation of his or her mode of transportation.

9. The responsibility for delivery of papers to subscribers shall be the sole responsibility of the Contractor. In this regard, it is understood that the Contractor is an Independent Contractor and as such is responsible for his or her own sub-contractors, agents and representatives. In the event that the Contractor shall be unable to deliver papers to subscribers, the responsibility of obtaining assistants or substitutes shall be that of the Contractor. The Company shall not be responsible nor liable for any damage to property or for injuries to others caused by the Contractor, his or her sub-contractors or assistants or substitutes while engaged in performance of this contract.

10. The term of this Agreement shall be for unlimited month(s) unless terminated by either party by giving at least thirty (30) days written notice. The notice of termination must be given prior to the first day of the month effective on the first day of the following month. Upon breach, by either party, of any of the terms of this Agreement, the non-breaching party may immediately terminate this Agreement without notice to party in default.

11. This Agreement terminates, supersedes and revokes all prior agreements between the parties hereto and constitutes the entire agreement between them.

DATED this _____ day of _____, 19____

Carrier Salesman
The INDEPENDENT RECORD
By _____

In order to induce the Company to enter into this Agreement, with the above-named Contractor, I hereby consent to the making of this Agreement and agree to pay all claims accruing to the Company in the case of default on the part of the Contractor. I further state that the Contractor is _____ years old as of his or her last birthday and is in good health.

DATED this _____ day of _____, 19____

Parent or Guardian

Relationship of Parent or
Guardian to Contractor

INDEPENDENT RECORD





What Every Parent Should Know About "THE CHAMPION" Accident Insurance Program

1. Designed by National Casualty Company, especially for youngsters acting as newspaper carriers.
 2. Along with "operating his or her own business," allows the youngster the opportunity to earn and learn and appreciate the value of having his or her own insurance program at an affordably low weekly or monthly premium. A total business experience.
 3. Pays benefits for all types of accidents.
 4. 24-hour-per-day protection, not just "On Route" coverage.
 5. Pays in addition to other insurance, no matter if group, blanket or individual coverage.
 6. No coordination or subrogation of benefits on coverage listed or shown in certificate or outline of coverage.
 7. No deductible or coinsurance clause— full or maximum benefits paid on all benefits listed in the certificate.
 8. Pays the insured youngster a Disability Benefit if off the route due to an accident.
 9. Substitute carriers, but not helpers, are protected while on the route. (Helpers must obtain their own "THE CHAMPION" insurance coverage.)
 10. The policy pays benefits for both in-patient hospital or non-hospital care.
 11. The policy pays an Accidental Death and Dismemberment benefit.
 12. *Benefits are paid to insured carriers directly.
 13. Fills the void on unpaid medical bills left by some parents' group or major medical programs. —Not all parents have coverage paying 100% of all expenses for medical services.
- We do not recommend that benefits under "THE CHAMPION" program be assigned directly for payment to the doctor or hospital for services rendered. If, however, assignments are made by the insured's parents or legal guardian, they will be honored as per State Insurance Laws.

WHAT YOUR 24-HOUR ACCIDENT POLICY PROVIDES

Benefits are paid under only one section—that which pays the most for any one covered accident.

Section I

When you are hospitalized
as a resident patient because of
a covered accident.

HOSPITAL EXPENSE BENEFIT

Up to \$35.00 a day for each day
you are confined, but not more than
\$5,000.00 for any one accident.

HOSPITAL SERVICES EXPENSE BENEFIT

Up to \$85.00 for hospital services
consisting of:

- Operating Room
- Anaesthesia
- X-ray Examination
- Laboratory Fees
- Medicines
- Dressings
- Wheel Chair
- Oxygen Tent
- Blood Transfusions

AMBULANCE EXPENSE BENEFIT

Up to \$50.00.

ACCIDENT DISABILITY BENEFIT

\$8.00 a week for as many as 52
weeks when injury prevents you from
performing your duties as a carrier.

Section II

Where hospitalization as a resident
patient is not required.

MEDICAL & DENTAL EXPENSE BENEFIT

Up to \$9.00 for each visit to physician
or dentist, but not more than \$350.00
for any one accident.

First visit must occur within 10 days
of accident.

X-RAY EXAMINATION EXPENSE BENEFIT

Up to \$22.00.

SPECIAL EMERGENCY AND MISCELLANEOUS BENEFIT

Up to \$70.00 for required:

- Sutures
- Fractures and Dislocation
Reductions

- Anaesthesia

- Splints

- Casts

- Dressings

- Antitoxin Injections against
rabies or tetanus

- Hospital Emergency Room use
or services

Does not include X-ray examination
expense benefit.

AMBULANCE EXPENSE BENEFIT

Up to \$50.00.

ACCIDENT DISABILITY BENEFIT

\$8.00 a week for as many as 52
weeks when injury prevents you from
performing your duties as a carrier.

Section III

If accident results in death,
dismemberment or loss of sight.

FOR LOSS OF LIFE, both hands or both
feet, sight of both eyes, hand and foot,
hand and sight of one eye, foot and
sight of one eye, occurring within
90 days of accident: \$3,000.00.

FOR LOSS of hand or foot or sight of
one eye: \$1,500.00.

AMBULANCE EXPENSE BENEFIT

Up to \$50.00.

ACCIDENT DISABILITY BENEFIT

\$8.00 a week for as many as 52
weeks, paid up to date of specific
loss if specific loss benefit is paid.

EXCEPTIONS

*Does not pay for loss occurring from war
or act of war, any attempt at suicide
or self-inflicted injury, hernia however
sustained, or sickness, disease or mental
illness.*

The above is a partial description of the terms and provisions of National Casualty Company form HMC 7088 U. 35¢ per week/\$1.50 per month

DATE 11/19/27
HEB 80
EX-111



Your benefits:

If you must be hospitalized
as a resident patient because of
a covered accident.

Where hospitalization as a resident
patient is not required.

If accident results in death,
dismemberment or loss of sight.

How to claim your benefits when you are hurt in a covered accident.

1. Secure medical treatment immediately following your accident.
2. Notify the Circulation Department of your accident.
3. Complete a claim blank and return it to the newspaper office.



vice makes the difference.

"THE CHAMPION III"[®]

From National Casualty Company

WITNESS STATEMENT

EXHIBIT 4
DATE 1/19/87
HB 80

NAME Bruce K Smith BILL NO. H380

ADDRESS 4110 Fieldstone Dr. - Beacon Hill DATE 1-17-87

WHOM DO YOU REPRESENT? Rayman Sub. Committee

SUPPORT L OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

January 19, 1987

Statment by Bruce K. Smith, publisher of the Bozeman Daily Chronicle in support of HB 80.

I am asking members of the committee support and give a do pass recommendation to HB 80.

When a young boy or girl is contracted by the newspaper for a delivery route, they are given the opportunity to purchase an accident insurance policy that covers them not only while they are delivering newspapers, but will provide protection for them 24 hours per day.

The plan the Chronicle has is designed especially for youngsters acting as newspaper carriers and gives them an opportunity to learn about the value of having their own insurance program at an affordably low weekly or monthly premium.

The plan pays benefits for all types of accidents as well as a disability benefit if the accident prevents the carrier from delivering the newspapers. It provides 24-hour coverage, not just "on route" coverage. In addition the policy insures the substitute while they are on the route. It also has accidental death and dismemberment benefits.

Should the carrier decline the insurance, the newspaper purchases a policy that will cover the youngster while he/she is on the route. The benefits are the same except for the fact that the policy costs the carrier nothing, the entire premium is paid by the newspaper. Newspaper carriers have insurance protection should they be injured while delivering newspapers.

The independent contractor status of newspaper carriers is being gradually eroded away by governmental agencies. They assume newspapers are taking advantage of young people who deliver their product. This is simply not true. When a youngster is contracted to deliver newspapers a representative

page 2

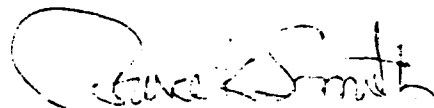
of the newspaper will sit down with him/her and their parents, go over the contract with them before they sign it. In addition the newspaper will give constant support and encouragement while the carrier is on the route.

Most carriers receive about 30% of the subscription price for each one of their subscribers. The Bozeman Chronicle has several carriers and families who have had the same route for years. I know one carrier who has been delivering papers for the last five years and now is a junior in high school. In addition to providing spending money, the newspaper route makes it possible for him to buy all his own clothing, he has even purchased a car with the money he has earned on his newspaper route.

Should newspapers not gain the exemption they seek from workers compensation fund, it will affect how they deal with their carriers and force them to begin looking for alternate delivery methods.

I started delivering newspapers when I was 11 years old, all of my children have had newspaper routes, I think it is valuable experience for young people.

I urge you to support this bill and give it a do pass recommendation.

Steve K. Smith

INDEPENDENT CONTRACTOR TESTS
DIVISION OF WORKERS' COMPENSATION

The Two-Part Test:

"An 'independent contractor' is one who renders service in the course of an occupation and:

1. has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and
2. is engaged in an independently established trade, occupation, profession, or business."
(Sec. 39-71-120, MCA)

Factors to Determine Freedom From Control:

1. direct evidence of right or exercise of control;
2. method of payment;
3. furnishing of equipment; and
4. right to fire

Insurance Compliance Bureau
January 19, 1987

WORKERS' COMEPNSATION
INDEPENDENT CONTRACTORS' COVERAGE LAW HB

DATE 1/19/81

80

Section 39-71-401, MCA

(1)...Workers' Compensation Act applies to all employers...and employees...

[except]

→ (2) ...Workers' Compensation Act does not apply to any of the following employments:

(a) ...

(b) ...

(c) ...

(d) employment of sole proprietors or working members of a partnership

→ other than those who consider themselves or hold themselves out as independent contractors

→ and who are not contracting for [:]

. agricultural services...

. broker or salesman services [in realty]

(e) ...

(f) ...

(g) ...

(3)...an independent contractor...

→ who is not contracting for [:]

. agricultural services...

. broker or salesman services [in realty]

must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

but he may apply to the division for an exemption from the Worker Compensation Act for himself.



DIVISION OF WORKERS' COMPENSATION

TED SCHWINDEN, GOVERNOR

MARGARET "PEG" CONDON BLDG.
5 SO. LAST CHANCE GULCH

STATE OF MONTANA

HELENA, MONTANA 59601

January 19, 1987

Honorable Les Kitselman, Chairman
House Business and Labor Committee
Montana State Legislature
Capitol Station
Helena, MT 59620

Re: House Bill 80: Supplemental Testimony

Dear Chairman Kitselman:

At your request, I have further information pertaining to House Bill 80 heard by your honorable committee this morning.

According to the State Compensation Fund, the following are class codes and premium rates for newspaper carriers:

Class code 4304 - Carriers on foot \$1.93 per \$100
Class code 7380 - Carriers on bicycle or other vehicle
\$5.19 per \$100

Premium rates may be higher for private carriers.

Most newspapers are covered under Plan 2 (private insurance carriers), including Lee Enterprises and the Great Falls Tribune which are covered by Transportation Insurance, Inc.

Please let me know if I can provide further information.

Sincerely,

A handwritten signature in cursive script that reads "Hiram Shaw".

Hiram Shaw, Chief
Insurance Compliance Bureau

HS/cl

cc: Robert J. Robinson, Administrator

Administration
406-444-6518

Division Telephones:
Insurance Compliance
406-444-6530

Safety
406-444-6401

"AN EQUAL OPPORTUNITY EMPLOYER"

publications & graphics



**DIVISION OF
WORKERS'
COMPENSATION**



**APPLICATION FOR
INDEPENDENT
CONTRACTOR
EXEMPTION**

DWC USE ONLY

Date Received

EXHIBIT 6

DATE 11/19/87

HB 80

Applicant's Name: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Applicant's Social Security #

Applicant's Federal I.D. #

Applicant's Telephone #

Business Telephone #

Business Name (DBA)

Brief Description of Business:

PART A: INSTRUCTIONS

1. Complete this form only if you are a sole proprietor or a working member of a partnership who holds himself out to be an independent contractor and do not want Workers' Compensation Insurance on yourself. Independent contractors who want Workers' Compensation Insurance and people who are employees should not complete this form.
2. If we approve your application, we will send you an approval letter, which will be effective for one year. This takes about 30 days. If your application is incomplete, we will return your application with a letter identifying the problems. If we do not approve your application, we will send you a letter explaining our reasons.
3. If you do not agree with the Division's decision you may request an informal administrative review to present or clarify facts and present arguments in support of your application. If the information presented shows you meet Division requirements, we will give you an approval letter. If the Division still does not approve your application, you may request a formal Division hearing. The decision from that hearing is appealable to a court.
4. Send the completed form and the information requested in the form to: Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana 59601. For information telephone, 1-800-332-6102 (toll free) or 444-6530.

PART B: APPLICATION REQUIREMENTS

CATEGORY 1. If you have employees, answer A, B, and C, below; then read Part C on the reverse side and sign the form.

- A. Number of persons employed by the business other than the applicant: _____
- B. Name of Workers' Compensation Insurance carrier: _____
- C. Workers' Compensation Insurance Policy Number: _____

CATEGORY 2. If you do not have employees, furnish the following information:

SECTION 1: Demonstrate that you are engaged in an independently established trade, occupation, profession or business by providing one or more of the following:

- A. Attach evidence that you pay self employment tax for yourself, or;
- B. Submit a copy of your most recent Federal or State Income Tax Report that shows income and expenses of your business, or;

CONTINUED ON REVERSE SIDE

- C. Provide a copy of the sales dealer agreement signed by both you and the hiring agent which demonstrates that you qualify as a non-employee according to the Internal Revenue Code Rules implementing the 1982 Federal Tax Equity & Fiscal Responsibility Act, and that shows you fulfill the IRS definition of direct seller.

SECTION 2. Demonstrate that you hold yourself out to be an independent contractor by doing one of the following:

- A. Attach a copy of a signed contract in which you are identified as an independent contractor who is free from control or direction over the performance of your services, other than the control or direction required by government regulation, and which is signed by the hiring agents and yourself; or;
- B. Attach letters from at least three different hiring agents, each of which state you are now or were under contract to them during your most recent tax year as an independent contractor in the business identified on the face of this form, and that you were free of their control or direction over the performance of your service, other than control or direction required by government regulation.

SECTION 3. Answer the following questions:

- A. Do you perform services using the judgement your trade, occupation, profession, or business requires rather than the hiring agent's instruction on how to perform? (Mark one only) YES ___ NO ___
- B. Does performance of new or altered services on your contract require a revision of your original contract to which you must consent before the new or altered services are performed? (Mark one only) YES ___ NO ___
- C. Do you have a large, substantial investment in tools, equipment, or knowledge essential to the performance of your services? (Mark one only) YES ___ NO ___ (If you mark "YES", the Division may require you to provide documentation of your investment.)

PART C: DECLARATIONS

Read the following:

1. I make this statement with the understanding that as a sole proprietor or working member of a partnership who is an independent contractor, I am required to purchase Workers' Compensation Insurance or obtain this exemption. (Note: If you are an employee, your employer must purchase Workers' Compensation Insurance to cover you under the provisions of the Workers' Compensation Act.)
2. I understand that if I purchase Workers' Compensation Insurance on myself and pay the required premium, there is no need for me to apply for an exemption as an independent contractor.
3. I understand that this application applies only to me and not to any person who is employed by me.
4. I understand that if this application is approved by the Division, exemption will be effective no longer than one year from the date of certification or sooner if the Division receives notification from me in writing that it should be cancelled.
5. I understand that if this application is approved and unless I purchase Workers' Compensation for myself, I am waiving all my rights to wage loss and medical benefits in the event I sustain an industrial injury or an occupational disease when I am working as an independent contractor. (Note: The benefits of a worker covered by Workers' Compensation Insurance include; a) reasonable medical services and prescription drugs that may be necessary as a result of an occupational injury or disease; b) wage-loss benefits while the worker is unable to return to work, amounting to two-thirds (2/3) of the wages received at the time of injury up to a maximum of the State's average weekly wage; c) if an injury results in a permanent disability or loss of a body member, an indemnity award or permanent wage-loss benefits; and d) additional benefits including payment for injuries causing loss of vision, disfigurement, burial and wage-loss benefits for dependents of a deceased worker.)

My signature on this application indicates my request for an exemption from the requirements of the Workers' Compensation Act and that all the information and declarations I have supplied with this application are true, complete and correct to the best of my knowledge.

DATE

SIGNATURE

DWC USE ONLY

WITNESS STATEMENT

EXHIBIT 2
DATE 1/12/87
HB 801

NAME George W. Moore BILL NO. 14A80
ADDRESS 1900 N. Main, Suite C, Helena DATE 1/12/87
WHOM DO YOU REPRESENT? MT. Press Press.
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

DATE 1/19/87
HB 80

NAME Lester H. Loble II BILL NO. HB 80
ADDRESS PO Box 176, Helene 59624 DATE 1/19/87
WHOM DO YOU REPRESENT? Lce Enterprises
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO. HOUSE BILL NO. 80DATE JANUARY 19, 1987SPONSOR REP. JAN BROWN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Les Loble	Helena	✓	
Mike Voeller	Helena	✓	
Jim Rickman	Helena	✓	
Dick Wesnick	Billings	✓	
CHUCK VINCENT	BILLINGS	✓	
Candra Grimes	Missoula	✓	
GEORGE MOORE	MPR	✓	
Russ Smith	Bozeman	✓	
Hiram Shaw	Workers' Compensation		X
MIKE WELSH	" "		X
Rich Felt	" "	✓	
Faily Olson	Helena	✓	
Jane Murray	Mont. Health Care		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

January 20, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on January 20, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 165 - Pharmacists Not Liable for Peer Review sponsored by Rep. Jan Brown. Rep. Brown stated that the bill amends the definition and adds pharmacist to the definition of health care professional.

PROPONENTS

Bob Likewise, Executive Director for the Montana State Pharmaceutical Association, and representing the pharmacists for the state of Montana. Mr. Likewise stated they wanted the committee to amend section 37-2-201, MCA, to include pharmacists in the definition of health care professionals. The purpose, he said, was to grant immunity from liability for actions of the interveners while working within the scope of the rules and by-laws of the Committee for Pharmacist Rehabilitation. Exhibit No. 1 and 2.

OPPONENTS

None.

QUESTIONS

Rep. Wallin asked if they are not responsible if they give the wrong prescription as prescribed by a doctor to someone. Mr. Likewise responded that that would come under the Board of Pharmacy. He stated that in the bill they are working with rehabilitation of pharmacists that have chemical dependency. He said that they are trying to determine that a chemically dependent individual is a threat to the public health and recognize this as a disease, and recommend treatment so that the individual can be productive and safe for public health.

Rep. Wallin asked if one of the members was an alcoholic and issued the wrong medicine to someone, would society want to be responsible for that individual. Mr. Likewise responded that was a different issue. He said that if the wrong medication was issued, this falls under legal ramifications; they are merely working on trying to rehabilitate the

CLOSING

Rep. Harper stated that there were some technical amendments that had been submitted for both House Bill No. 142 and 143. He stated that the changes that were incorporated in House Bill No. 142 were not incorporated in House Bill No. 143 at this time, but probably would be if No. 142 passed.

EXECUTIVE ACTION - January 20, 1987 - 9:00 a.m.

ACTION ON HOUSE BILL NO. 142 and HOUSE BILL NO. 143

Chairman Kitselman referred both bills to a subcommittee composed of Rep. Glaser, Rep. Swysgood, and Rep. Driscoll, with Rep. Glaser as chairman.

ACTION ON HOUSE BILL NO. 80

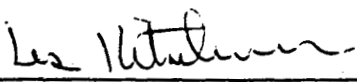
Chairman Kitselman referred House Bill No. 80 to a subcommittee composed of Rep. Simon, Rep. Thomas, and Rep. Nisbet, with Rep. Simon as chairman.

ACTION ON HOUSE BILL NO. 165

Chairman Kitselman referred House Bill No. 165 to a subcommittee composed of Rep. Grinde, Rep. Wallin, and Rep. Brown, with Rep. Grinde as chairman.

ADJOURNMENT

The meeting adjourned at 9:15 a. m.



REP. LES KITSELMAN, Chairman

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 20, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

January 22, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on January 22, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 199 - Automobile Liability Insurance on the Person Rather Than on the Vehicle sponsored by Rep. William (Red) Menahan, House District No. 67, Anaconda. Rep. Menahan stated that this bill proposes to insure the driver instead of the vehicle. He stated that something needed to be done to help the consumer in the state of Montana.

PROPONENTS

Rep. Jerry Driscoll stated that this bill would make getting insurance more simple because he could insure the members of his family instead of all four of his cars.

OPPONENTS

Roger McGlen, Independent Insurance Agents Association of Montana. Mr. McGlen stated that in 1915 the driver was insured without regard to the vehicle he owned, and due to the cost and other reasons this type of insurance was dropped as unworkable in 1920. He said this was again studied in 1953, and it was determined that it must be uniformly adopted throughout the states and regions to make it applicable, financial responsibility laws, the motor carrier laws, and the compulsory auto insurance laws would have to be amended.

He believes that this bill would reduce protection to the Montana insurance consumer. He commented that the personal auto policy now conforms to the state laws of any state that a driver is driving through, and if a law like this is adopted, which is unique in the United States, it would be difficult for a policy to conform. He said that all family members are covered under the current policy plan, and he believes that there will not be any premium cost savings to the consumer. He also stated that under compulsory auto laws in Montana proof of insurance has to be given when a drivers' license is issued or renewed, but if the driver is insured without regard to the vehicle owned, each licensed

this on a case by case basis as a matter of convenience for the customers, they would support the bill.

OPPONENTS

None.

QUESTIONS

None

CLOSING

Rep. McCormick made no further comments.

EXECUTIVE ACTION - January 22, 1987 - 10:30 a.m.

ACTION ON HOUSE BILL NO. 206

Rep. Swysgood moved that House Bill No. 206 DO PASS. The motion carried with Rep. Wallin opposed.

ACTION ON HOUSE BILL NO. 80

Rep. Brown moved that House Bill No. 80 DO PASS.

Discussion

Rep. Simon explained that the subcommittee tried to add language in the bill to clarify the definitions of "part-time correspondent" by changing it to "free-lance correspondent". He said they also added a definition of "free-lance correspondent" as follows: a "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article, and a "newspaper carrier" is a person who provides a newspaper with the service of delivering newspapers singly or in bundles, but does not include an employee of the newspaper who in addition to his main duties carries or delivers papers. Rep. Simon said there was some concern that there would be some circle language that would be unclear if they did not make the additional statement, so that it would exclude the regular employee of the newspaper.

Rep. Simon moved the proposed amendment. The motion carried unanimously.

Rep. Brown moved that House Bill No. 80 DO PASS AS AMENDED. The motion carried with Rep. McCormick, Rep. Nisbet, Rep. Hanson, and Rep. Driscoll opposed, and Rep. Cohen not voting.

STANDING COMMITTEE REPORT

January 22

19 37

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 30

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

REP. LES KITSELMAN

Chairman

AMENDMENTS AS FOLLOW:

- 1) Page 1, lines 4 and 5
Following: "THAT" on line 4
Strike: the remainder of line 4 and line 5 through "AS"
- 2) Page 1, line 6
Following: "OR"
Strike: "PART-TIME"
Insert: "FREE-LANCE"
- 3) Page 2, lines 10 and 11
Following: "contracting" on line 10
Strike: the remainder of line 10 and line 11 through "or"
- 4) Page 3, line 4
Following: "District"
Strike: "..."
Insert: "..."
- 5) Page 3, line 5
Following: line 4
Insert: "(i) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection "newspaper carrier":
(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles, but
(ii) does not include an employee of the paper who incidentally to his main duties, carries or delivers papers."
- 6) Page 3, lines 7, 8, and 9
Following: "contracting" on line 7
Strike: the remainder of line 7, line 8 in its entirety, and line 9 through "or"

FIRST

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AVAILABLE

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 22, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
FINAL COMMITTEE REPORT OF REFERRED BILLS
COMMITTEE--(S) BUSINESS & INDUSTRY

PAGE NBR..... 149
RUN TIME08:32
RUN DATE..... 04/22/87

CHAIRMAN--SEN. ALLEN C. KOLSTAD
NORMAL SCHEDULE==> SITE: ROOM 410

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY--CAROLYN LINDEN

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0022	1/13	1/20	1/20/87	CONCUR		1/20/87
HARPER, HAL			CLARIFY NOTICE REQUIREMENTS ON DISPOSITION OF COLLATERAL AFTER DEFAULT			
HB0030	1/21	1/29	1/29/87	CONCUR		1/29/87
KITSELMAN, LES			RESPONSIBILITIES OF BEER WHOLESALER			
HB0031	1/22	1/29	1/29/87	CONCUR		1/29/87
KITSELMAN, LES			CHANGING COMPOSITION OF PRIVATE SECURITY PATROLMEN AND INVESTIGATORS BOARD			
HB0034	1/12	1/16	1/16/87	CONCUR		1/16/87
SPAETH, GARY			APPLICANT FOR BARBER INSTRUCTOR CERTIFICATE MUST BE LICENSED BARBER			
HB0041	1/21	2/06	2/6/87	CONCUR		2/6/87
WINSLOW, CAL			CREATE MATURE DEFENSIVE DRIVING ACT; REDUCE PREMIUM RATES OVER AGE 55			
HB0066	3/02	3/16	3/16/87	CONCUR		3/16/87
PAVLOVICH, BOB			LICENSING MANUFACTURERS AND DISTRIBUTORS OF VIDEO POKER MACHINES			
HB0067	2/03	3/04	3/4/87; 3/5/87	CONCUR AS AMENDED		3/5/87
PAVLOVICH, BOB			GENERALLY REVISE VIDEO MACHINE CONTROL ACT OF 1985			
HB0068	1/22	1/29	1/29/87; 1/30/87; 2/4/87 2/5/87 2/10/87	CONCUR AS AMENDED		2/10/87
KITSELMAN, LES			REVISING SECURITY PATROLMEN AND INVESTIGATORS LAW			
HB0080	1/27	2/10	2/10/87; 2/13/87	CONCUR AS AMENDED		2/13/87
BROWN, JAN			NEWSPAPER CARRIER OR CORRESPONDENT NEED NOT HAVE WORKERS' COMPENSATION			
HB0094	2/16	3/11	3/11/87	CONCUR		3/11/87
SMITH, CLYDE			MAKE MEMBERSHIP IN RATING ORGANIZATION OPTIONAL FOR STATE WORKERS' COMP FUND			
HB0098	1/21	1/30	1/30/87; 2/6/87	CONCUR		2/6/87
MANUEL, REX			ALLOWING A FARM MUTUAL TO INSURE LIABILITY RISKS			

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 10, 1987

The seventeenth meeting of the Business and Industry Committee met on Tuesday, February 10, 1987, in Room 410 of the Capitol at 10 a.m. The meeting was called to order by Chairman Allen C. Kolstad.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL NO. 80: Rep. Jan Brown, House District 46, Helena, chief sponsor of the bill, said the bill would exempt newspaper carriers and free-lance correspondents from workers' compensation coverage. She noted that the bill had been introduced in the 1985 session but was killed in the House after being carried through the Senate. She feels the language of the bill has been cleaned up this time and that it is a very straightforward bill. She then introduced Les Loble, the primary proponent of the bill.

PROPOSERS: Les Loble, representing Lee Enterprises, Inc., asked for support of the committee for HB 80 and a recommendation that this bill be concurred in. He then introduced those in attendance in support of the bill and noted that some of those introduced would be testifying and would answer questions from the committee. (EXHIBIT 1)

Dave Byerly, General Manager of the Lewistown News Argus stated they were a 5,000 circulation, twice-a-week paper covering central Montana and felt that he spoke for many weekly papers in Montana urging support for this bill. He said many of the community papers like theirs reflect the economy of the towns in which they do business. Within the last six months three county seat publishers have come to them asking them to buy their newspapers. To force weekly newspapers to pay workers' compensation on their carriers and correspondents would impose an unnecessary financial burden. He said they have numerous correspondents throughout the county who are paid by the inch for what they write. They also have 23 carriers who deliver their paper in Lewistown, the average age being 12 years. He feels these people are independent contractors and didn't believe workers' compensation was intended to cover these independent contractors. He expressed concern about them being forced to cover their correspondents and carriers and believed the door would then be opened and

they would have to include them under unemployment insurance, withholding for Social Security, etc.

Bruce Smith, Publisher of the Bozeman Daily Chronicle, submitted written testimony in favor of HB 80. (EXHIBIT 2)

Steve Studt, Publisher of the Great Falls Tribune, explained the process of paying their correspondents by the inch basis and said they have 350 carriers, including 120 adults. He believes these are independent contractors who buy the newspaper at wholesale and resell at retail prices. His paper provides an insurance program which the carriers can purchase for 24-hour coverage, or the newspaper will purchase a policy that will cover the youngster while he/she is on the route if the carrier declines to purchase the 24-hour coverage. He urged the committee's support of HB 80.

Carl Rexroad, Managing Editor of the Billings Gazette explained their use of correspondents on a free-lance basis and said he saw them as resources upon which to draw in the community as their staff is not large enough to cover all the area. All of these people work on their own time, under no constraints and submit their writings or photographs to the paper on a purchase basis which is either accepted or rejected. He said there is no rationale why these people should not receive an exemption from workers' compensation.

George W. Moore, Executive Director of the Montana Press Association, representing 68 weekly and 11 daily newspapers in Montana, appeared in support of HB 80. (EXHIBIT 3)

OPPONENTS: Hiram Shaw, Workers' Compensation Division, Department of Labor and Industry, explained that carriers are not now excluded from coverage. In the event of an injury, the insurer would be liable and most newspapers are covered by private insurance companies rather than the state fund. The rates are \$1.93 per hundred for foot carriers and \$5.92 per hundred for bicycle or motor vehicle carriers. No carriers have been granted independent contract status as this has not been established by law. He distributed an example of the results of the determination of an independent contractor status from the Highway Division's Legal Counsel denying that status and stated that the Governor's Advisory Council thoroughly studied independent contractor laws and

4

did not recognize this particular type of exemption.
(EXHIBIT 4)

DISCUSSION OF HOUSE BILL NO. 80: Chairman Kolstad called for questions from the committee.

Sen. McLane asked Mr. Smith if he had said the carriers were covered by some type of insurance. Mr. Smith replied that they explain to the carrier and his/her parents that they may purchase 24-hour coverage, or if they decline that offer, the paper buys a policy that will cover the carriers while he/she is on the route. Sen. McLane then asked if this was a common practice with all papers. Mr. Smith answered that all the daily newspapers do this and that the cost is about \$3 per month.

Chairman Kolstad asked what the advantage would be if the carrier purchased his coverage through the newspaper and Mr. Smith said in this way the carrier would have 24-hour coverage rather than just while they were on the route.

In answer to a question from Sen. Williams, Mr. Shaw repeated the rates for workers' compensation coverage. Mr. Shaw said that some papers testified they don't cover their carriers and he believes that they have not paid the premium for those carriers. However, if they were injured, they would still be covered as employees. Therefore, the insurer is either foregoing or ignoring that premium. Sen. Williams asked what the penalty was for not paying the premium. Mr. Shaw said there is no penalty for not collecting the premium if the insurer decides he doesn't want to; however, it doesn't remove the insurer from that liability. That is up to the insurer. Sen. Williams then asked if there would not be an audit until there was a claim made by one of the carriers. Mr. Shaw stated that would probably be the case - until the claim occurred, the insurer may not audit.

Chairman Kolstad asked Mr. Shaw if he had a problem with considering carriers as independent contractors. He noted that the Division's position is that at the present time they are not independent contractors and if they applied for that status based on what they know about their function, they probably would be considered employees rather than independent contractors. He further stated that it is, of course, up to the legislature to decide whether they should be excluded or not. The Division's position is based on whether or not someone behaves as an independent contractor. The exemption is given to

independent contractors to save them the trouble of getting annual exemption. However, in the case of newspaper carriers, they typically don't behave as independent contractors.

Sen. Williams asked Mr. Shaw if there had been any claims submitted by carriers or correspondents against workers' compensation. He replied that there have been some claims such as Carlson v. The Billings Gazette, which was a Supreme Court decision for the plaintiff. He stated he did not know what the settlement was but did know there was considerable medical expense as the person was riding in a motor vehicle. Sen. Williams asked if, as a result of that, an audit was made of The Billings Gazette history of workers' Compensation to which Mr. Shaw replied that he was not sure.

Sen. McLane noted that he likes his morning paper delivered at 6 a.m. and that perhaps he may have more control over the time a carrier delivers the paper. He felt this would relate to the portion of the bill that states: "...hiring agent has extensive control over the workers performance including the precise time and the manner of delivery..." Mr. Shaw said that, as he understood it, the newspaper generally has control over the limitations of time when those papers are delivered. Beyond that, the consumer may put certain demands on the carrier; but, that aspect is beyond the scope of this particular instance.

Sen. Weeding asked if the \$3 private insurance policy would constitute a private in-lieu-of workers' compensation coverage. Mr. Shaw said he had not looked at one of those policies, but basically, workers' compensation differs in that there is an exclusive remedy which prohibits a carrier from suing the paper for health and wage loss; further, workers' compensation covers unlimited medical costs and a steady wage loss.

Sen. Thayer asked Mr. Shaw if he had been present when the Advisory Council discussed the exemption section. He replied he had been present for a portion of the time. Sen. Thayer then stated that the Council didn't feel it was their prerogative to deal with individual exemptions. Therefore, they dealt quite extensively with the law itself but did not deal with minor changes in the law.

Sen Williams asked Mr. Moore or a representative of The Billings Gazette to comment on the Carlson v. The Billings

Gazette decision. Mr. Loble said he thought it was one of the most bizarre cases that had ever come out of the Montana Supreme Court. The case involved a motor carrier whose live-in girlfriend was helping him deliver papers on his route. She was hurt in a motor vehicle accident while she was doing this for him, and the case went to the Supreme Court who said she had been injured while employed for The Billings Gazette. She was awarded damages as if she were a regular employee covered by employer's insurance carrier. Mr. Loble explained that it is just this sort of case which makes a business very concerned about not having a particular class of workers specifically exempt.

Sen. Williams asked what the settlement was, and Mr. Loble answered that he did not know the figures, but assumed that the medical expenses were probably quite extensive.

Sen. Williams also wanted to know if there was an audit of the Workers' Compensation situation involving The Billings Gazette, and no one knew for certain.

Mr. Loble stated that he would like to point out that the rate quoted for the state workers' compensation didn't sound very high. But when you consider \$1.95 for foot carriers and \$5.19 for bicycle and motor vehicle carriers per \$100 of payroll per month, not to mention the free lance correspondents who could be required to be covered if this bill does not pass, it is a considerable amount. There are many newspapers that are having a hard economical time as it is.

Sen. Walker asked if someone could in effect sue for compensation from Workers' Comp. if an employer was not paying the premiums. Mr. Rexroad explained that many of those things are not clear. If working persons are definitely considered independent contractors, they should be exempt from coverage under a businesses insurance, but who the independent contractors consist of has not been made clear in the statutes. He stated that it was their opinion that all of these persons they are asking exempt status for, are indeed independent contractors. At the moment, it all boils down to which judge you get if you happen to get involved in a lawsuit, and what his definition of independent contractor is. He stated that this had been a growing concern of theirs for some time.

Sen. Williams asked if he had understood it correctly that an employer does not have to pay the premium, but an

employee can go to the state and claim workers' comp and be paid because there is no agreement as to who is exempt. Mr. Loble stated that if he falls under the classification of independent contractor, then he is not covered. Otherwise he may be, and that is the purpose of this bill.

Williams then wanted to know if The Billings Gazette was paying when the claim cited was filed and when the person received the settlement. Mr. Loble answered that they were not and that they are not now paying.

Sen. Williams wanted to know how it is decided to do an audit concerning a workers' comp case. Do they wait until a claim is filed and they find out no premium is paid, or what? He remarked that that may have something to do with the fact that the program is over a million dollars in the hole. He stated that perhaps the state ought to sell out to a private company.

Mr. Wayne Schile, The Billings Gazette, interjected that with regard to the usual claims, such as a carrier slipping on the ice, etc., all businesses have those kinds of things happen and have all had some claims. He stated that a few weeks ago they had that happen and a carrier was injured on the route. The insurance which they subscribe to paid the claim and if one were to check, there has been no trouble with getting those types of things paid for. Most of the kids are doubly insured through the schools and their parents coverage and probably already have more coverage than is necessary. Further, they do not feel that they are in violation of any laws by not paying premiums for the carriers, because they regard them as independent contractors, and even if they aren't, individual coverage is offered to the carriers. He stated that he has been in contact with publishers in at least five other states and none of the others force them to come under worker's comp, and he is concerned about claims that may be paid without the insurers paying the premiums. Another reason for not having them covered under the workers' comp is the huge turnover you have with over 900 carriers.

There being no further questions, Rep. Brown closed the hearing on HB 80 by stating that it is very evident that this bill is needed. It will clarify that the carriers are independent contractors and as such will be exempt from coverage under the Workers' Comp. A carrier will not be able to go and try to file a claim and he will know from the outset that he is not covered.

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2/10/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

DATE

2/10/87

COMMITTEE ON

Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
James B. Carpio	CONSULTING ENGINEERS COUNCIL OF MONTANA	HB 310	X	
Steve Smith	Bozeman Daily Chronicle	HB 80	X	
in Rickman	Helena - Independent Record	HB 80	X	
Andrea G. Jones	Missoula - Missoulian	HB 80	X	
Les Loble	Lee Enterprises, INC	HB 80	X	
Steve Studt	Great Falls Tribune	HB 80	X	
Steve McCreary	PR - PRESS ASSN.	"	"	
Steve Byerly	Leavenworth News-Herald	HB 80	✓	
Steve Weller	See Newspaper	HB 80	✓	
Arman H. Hays	Workers' Comp	HB 80		✓
Phil Porrim	American Society of Civil Engs.	HB 310	✓	
John Morrison Jr.	Consulting Engineers Council of MT	HB 310	✓	
Wayne Schultz	Billings Gazette	HB 80	✓	
Jeffrey S. Spring	Billings Gazette	HB 80	✓	
James H. Hays	Billings Gazette	HB 80	✓	
Jim Cummings	CONS. ENGR. COUN. OF MT	HB 310	✓	
Montana Chapter, AIA	Montana Chapter, AIA	HB 310	✓	
MT. Tech. Council	MT. Tech. Council	HB-310	✓	

NAME: Lester H. Lowle, II DATE: 2/10/87

ADDRESS: Box 176 Helena SENATE BUSINESS & INDUSTRY

PHONE: 20070 EXHIBIT NO. 1

REPRESENTING WHOM? Lee Enterprises, Inc DATE: 2/10/87

APPEARING ON WHICH PROPOSAL: HB 80 BILL NO. HB 80

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: Statement attached.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

February 10, 1987

Statement in Support of HB 80 by Jan Brown

Mr. Chairman, members of the committee, my name is Lester H. Loble, II. I represent Lee Enterprises, Inc. I am asking your support for HB 80 and a recommendation that this bill be concurred in.

HB 80 exempts newspaper carriers and free-lance correspondents from workers' compensation coverage. Last session the Senate passed a bill deleting the requirement that carriers and free-lance correspondents apply for an exemption as an independent contractor. The implied assumption behind the Senate bill was that these two employments are performed by independent contractors. That assumption is correct. In HB 80 we ask that it be made express rather than leave the assumption unstated.

Carriers truly are independent contractors: they buy their papers at wholesale and sell them at retail. They deduct their expenses such as rubber bands, plastic covers, hiring of substitutes when they are sick or on vacation, and keep what is left--their profit. They each individually service their customers and are responsible for collection of moneys owed them.

For many youngsters, this is their earliest first-hand experience with the free enterprise system. Many adults in this room--including members of this committee, no doubt--had experience with this example of how an independent contractor and independent business person operates.

There are 2,200 carriers contracting with Montana papers, 129 here in Helena, 731 in Billings, 470 in Great Falls, mostly boys and

girls in the 12-15 age bracket. Each carrier has a substitute; if we include moms, dads, brothers and sisters who are occasionally pressed into service there could easily be 10,000 people delivering papers at one time or another during a year.

Until very recently, the question of workers' compensation coverage was never even considered. It was "obvious" that carriers were not covered. The Montana Supreme Court has changed all that. Its expansive view of the reach of the workers' compensation laws has expanded the State Plan into bankruptcy. The Administration has a thick bill revamping the law and which attempts to reverse those court decisions. Prudence dictates that the law be crystal-clear for private business as well as for the state.

Contrary to what you will hear from the AFL/CIO: workers' compensation coverage is not now provided. Accordingly, this bill will not decrease current costs of operation of newspapers. It will forestall the possibility of increased costs being imposed on the papers--in the case of the Montana dailies about \$200,000.00 per year. Nor is this a Lee Enterprises relief bill. This bill affects all weeklies and all dailies--as you will see from witnesses in a moment.

This bill was amended in the House committee so that it requires written acknowledgment by both the free-lance correspondent and by the carrier that workers' compensation coverage is not provided. If the carrier is a minor then an adult or guardian must so acknowledge. In other words the free-lance correspondents and the carriers know exactly what the conditions of their

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contracts are. This is the only exemption in the workers' compensation law which provides this protection.

Other states have "protected" carriers by mandating coverage. When the cost of fringes for full-time adult employees are imposed for the services of part-time youngsters, economics drive the kids out. You can go to other states and watch residential delivery of papers, but don't look for 14 year old boys and girls on their bikes. Watch for the pickup with the automatic newspaper thrower. The driver loads up the catapult with 50-60 papers and drives down the middle of the street firing them left and right in the general direction of the subscriber's homes. The papers contract with "Newspaper Delivery, Incorporated" and let it (or them) worry about workers' compensation coverage and other payroll add-ons. The kids lose the money-making opportunity.

Consider some of these statistics: Between 1980 and 1986 the number of daily newspapers in the United States and Canada using the "little merchant" system decreased by 22.3%. Newspapers using the little merchant system note that carrier turnover ranges from 50% to 100% annually but newspapers shifting to adult carriers showed dramatic drops. For example some showed no turnover in two years. Others show a weekly turnover dropping from 7.4% to 2.2%. Circulation managers say that adults are more reliable than youths. Adults require ^{fewer} district managers to supervise them and fewer people in the circulation office to handle complaints and other support duties. In Toronto, for example, The Globe and Mail reduced its district managers from 80 to 21 when it switched to adults and complaints dropped from

4,000 a week to 900 a week. The Columbus Dispatch found that kids could average 60 papers a day but adults 250 to 300 papers a day. In other words only 25% as many adults were needed as kids.

The lesson to be learned here is that there are enough economic forces already operating in the newspaper industry to switch from kids to adults. Additional ones should not be added.

The case for the free-lance correspondent exemption is also strong. Montana's 11 dailies have between 125 and 150 correspondents; the weeklies 500-700. Many of these are homemakers selling their writing and photographic services to several sources; often in more than one state. There is no set standard of payment for those people throughout the industry, which would add another administrative nightmare to the entire process unless they have exempt status.

We request a "BE CONCURRED IN" recommendation ^{from} ~~for~~ the Committee.

Thank you.

NAME: Jace K. Smith

DATE: 2/10/87

ADDRESS: 410 Fieldstone Dr.

SENATE BUS N SS & INDUSTRY

EXHIBIT NO. 2

PHONE: 587-4491

DATE 2/10/87

BILL NO. HB 80

REPRESENTING WHOM?

Raymond Daily Chronicle

APPEARING ON WHICH PROPOSAL: HB-80

DO YOU:

SUPPORT?

X.

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

February 10, 1987

FILE NO. 2/10/87
BILL NO. 71B80

Statment by Bruce K. Smith, publisher of the Bozeman Daily Chronicle, in support of HB80

I am asking members of the committee to support and give a do pass recommendation to HB 80.

When a young boy or girl is contracted by the newspaper for a delivery route, they are given the opportunity to purchase accident insurance that covers them not only while they are delivering newspapers, but will provide protection for them 24 hours per day.

The plan the Chronicle has is designed especially for youngsters acting as newspaper carriers and gives them an opportunity to learn about the value of having their own insurance program at an affordably low weekly or monthly premium.

The plan pays benefits for all types of accidents as well as a disability benefit if the accident prevents the carrier from delivering the newspapers. It provides 24-hour coverage, not just "on route" coverage. In addition, the policy insures the substitute while they are on the route. It also has accidental death and dismemberment benefits.

Should the carrier decline the insurance, the newspaper purchases a policy that will cover the youngster while he/she is on the route. The benefits are the same except for the fact that the policy costs the carrier nothing, the entire premium is paid by the newspaper. All newspaper carriers have insurance protection whould they be injured whild delivering newspapers.

The independent contractor status of newspaper carriers is being gradually eroded away by governmental agencies. They assume newspapers are taking advantage of young people who deliver their product. This is simply not true. When a youngster is contracted to deliver newspapers a representative of the newspaper will sit down with him/her and their parents, go over the contract with them before they sign it. In addition the newspaper will give constant support and encouragement while the carrier is on the route.

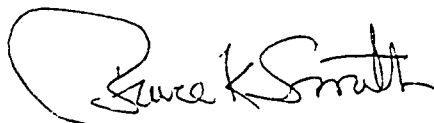
Most carriers receive about 30% of the subscription price for each one of their subscribers. The Bozeman Chronicle has several carriers and families who have had the same route for years. I know one carrier who has been delivering newspapers for the last five years and now is a junior

in high school. In addition to providing spending money, the newspaper route makes it possible for him to buy all his own clothing, he has even purchased a car with the money he has earned from his newspaper route.

Should newspapers not gain the exemption they seek from workers compensation fund, it will affect how they deal with their carriers and force them to begin looking for alternate delivery methods.

I started delivering newspapers when I was 11 years old, all of my children have had newspaper routes, I think it is a valuable experience for young people.

I urge you to support this bill and give it a do pass recommendation.

A handwritten signature in dark ink, appearing to read "Bruce K. Smith". The signature is written in a cursive style with a large, looping initial "B".

NAME: George W. Moore DATE: 2/10/87

ADDRESS: 1950 W. Main St, Suite 5

PHONE: 443-2850 EXHIBIT NO. 3

REPRESENTING WHOM? Net-Press Assn. BILL NO. 7/8/80

APPEARING ON WHICH PROPOSAL: H B 82

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

MISTER CHAIRMAN, MEMBERS OF THE COMMITTEE.

FOR THE RECORD, MY NAME IS GEORGE W. MOORE, AND I'M EXECUTIVE DIRECTOR OF THE MONTANA PRESS ASSOCIATION, WHICH REPRESENTS 68 WEEKLY NEWSPAPERS AND ALL 11 DAILY NEWSPAPERS IN THE STATE OF MONTANA.

I APPEAR BEFORE YOU TODAY IN SUPPORT OF HOUSE BILL 80 AS AMENDED.

I'D LIKE TO BEGIN BY EXPANDING A LITTLE ON WHY WE SEEK THIS ADDITION TO THE WORKERS' COMPENSATION ACT.

WE ARE MOTIVATED, SAD TO SAY, PRIMARILY BY FEAR ... FEAR THAT SOMEWHERE DOWN THE ROAD, PERHAPS WITHIN THE NEXT TWO YEARS, SOME GOVERNMENT ADMINISTRATOR OR SOME JUDGE SOMEWHERE WILL SUDDENLY DECIDE FOR NO GOOD REASON THAT NEWSPAPER CARRIERS AND FREE-LANCE CORRESPONDENTS HAVE SOMEHOW MAGICALLY BEEN TRANSFORMED INTO EMPLOYEES TO BE COVERED BY WORKERS' COMPENSATION.

SUCH A CHANGE WOULD CREATE PROFOUND DISRUPTION WITHIN OUR INDUSTRY, FROM THE SMALLEST WEEKLY NEWSPAPER TO THE LARGEST DAILY NEWSPAPER ... AND IT COULD EVEN FORCE SOME OF OUR SMALLER NEWSPAPERS -- ESPECIALLY OUR WEEKLY NEWSPAPERS -- TO CLOSE THEIR DOORS FOREVER.

I DON'T WANT TO SEE THAT HAPPEN, AND I'M SURE YOU DON'T, EITHER.

ALL WE ARE SEEKING, THEN, IS A RESONABLE ASSURANCE THAT WHAT IS LAWFUL BUSINESS CONDUCT TODAY WILL REMAIN LAWFUL BUSINESS CONDUCT FOR THE FORESEEABLE FUTURE.

I'D LIKE, NOW, TO HIGHLIGHT SOME ASPECTS OF THE RELATIONSHIP BETWEEN OUR NEWSPAPERS AND THESE INDEPENDENT CONTRACTORS.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 2-10-87

BILL NO. H.B. 80

64

IN THE FIRST PLACE, HOUSE BILL 80 AS AMENDED PROVIDES FOR THE CARRIERS AND FREE-LANCE CORRESPONDENTS TO ACKNOWLEDGE IN WRITING THAT THEY ARE NOT COVERED BY WORKERS' COMPENSATION.

AND IN THE SECOND PLACE -- AND HERE I'M THINKING PRIMARLY ABOUT YOUNG NEWSPAPER CARRIERS -- WE PRESENTLY AND WILL IN THE FUTURE INVOLVE THE PARENTS IN THE WORK RELATIONSHIP.

WE NOW REQUIRE THE PARENTS TO CO-SIGN THE CARRIER CONTRACTS, AND SO THEY'RE WELL AWARE OF THE TERMS OF THE CONTRACT. AND FURTHERMORE, THE PARENTS ARE CONSTANTLY AWARE OF THE WORKING SITUATION BY VIRTUE OF THEIR DAY-TO-DAY CONTACT WITH THEIR YOUNG CARRIER ... THEIR YOUNG BUSINESS PERSON, IF YOU WILL.

GIVEN THAT RELATIONSHIP, IT STRIKES US AS SOMEWHAT INAPPROPRIATE THAT A LOWER-ECHELON STATE ADMINISTRATOR MIGHT COME ALONG IN A YEAR OR TWO AND INJECT HIMSELF AND THE STATE INTO THE WORKING RELATIONSHIP ... A RELATIONSHIP THAT HAS NOT ONLY THE APPROVAL, BUT ALSO THE ENDORSEMENT, OF THE PARENTS.

IN CONCLUSION, WE ASK THAT REASON PREVAIL IN THIS INSTANCE AND THAT YOU APPROVE HOUSE BILL 80 AS AMENDED.

THANK YOU.

George W. Moore
Executive Director

February 10, 1987

January 28, 1987

INTEROFFICE MEMORANDUM

TO: MIKE WELSH, Uninsured Employers' Fund Supervisor
KAREN DOIG, Claims Investigator

FROM: STEVEN J. SHAPIRO, Chief Legal Counsel *JS*

RE: Sabrina Graham -- Spokesman Review

This is in response to your inquiry of January 5, 1987, as to the basis of my dissent from your determination that Sabrina Graham is an independent contractor.

From the information available, the following appears:

Independently Established:

There is no information indicating that Ms. Graham was independently established in some trade, occupation, profession, or business. As far as I see, she delivered the Spokesman Review for Cowles Publishing Company only and did not provide newspaper delivery service, or any other delivery service for any other hiring agents.

Right of Control:

It appears that the hiring agent had extensive control over the worker's performance including the precise time and manner of delivery.

Right to Fire:

It appears that the hiring agent had an absolute right to terminate the work relationship without incurring liability, except for services already performed.

Investment in Knowledge or Equipment:

The only equipment really required was the car supplied by Ms. Graham. Any vending machines for newspapers which she serviced were supplied by the newspaper. As we know, the supplier of equipment alone does not necessarily establish the nature of the work relationship.

In considering all of the factors together, it is my feeling that these factors weigh more heavily toward the establishment of an employment relationship rather than an independent contractor relationship.

SJS/gp
DWC-1409t

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 13, 1987

The twentieth meeting of the Business and Industry Committee was called to order by Chairman Allen C. Kolstad at 10:04 a.m. on Friday, February 13, 1987, in Room 410 of the Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF SENATE BILL NO. 222: Sen. William Farrell, Senate District 31, Missoula, is the chief sponsor of this bill. He distributed a working copy of the bill with the proposed amendments already interjected into it so that the committee could see how the bill should be amended. He explained that the bill had to be amended because there was a statutory appropriation in it when it was originally drafted. He then learned that he couldn't introduce an appropriation bill in the Senate, thus the amendments. There were also some technical problems which would be taken care of. He noted that the bill originated because of fuel taxes imposed on the transportation industry and the fact that there is a lack of opportunity for many in-state truckers to bid on transportation of commodities purchased outside the state by state agencies. Present procedures only allow for vendor's bids on commodities including freight costs, and not separate bids for freight and bids for only the commodity. This bill is attempting to change that situation so that Montana companies can bid on the transportation only part of the cost of a product and a pilot program has been set up in the Department of Commerce. Rep. Farrell feels hopeful that this change will give our instate carriers a chance to bid and get the 3% preference. Rep. Farrell then explained that the figures on the fiscal note for SB 222 were not all correct, but the amount showing the estimated 1.9 million dollars spent by the state for transportation should still be accurate. Rep. Farrell believes that the pilot program has shown that the Montana transportation industry can cut the out-of-state broker out and save the state approximately 13% and at the same time put about a million dollars back into the trucking and transportation economy in Montana. (EXHIBIT 1)

PROPOSERS: Mr. William J. Fogarty, Administrator, Transportation Division, Department of Commerce, Helena, explained the pilot program referred to by Rep. Farrell as follows: At the request of Rep. Farrell, a joint meeting was set up early last summer for the Dept. of

public hearing, and in most cases they decline to hold a public hearing and then the MEDB holds the public hearing. He stated that they have nothing that they are trying to hide, but that there are many aspects of financing that they have a right to keep confidential for the sake of the borrower. Sen. Meyer wanted to know how much the bank would participate in a loan such as this and Mr. Ewer answered that they envision the program to call for a minimum participation by the bank of 20% and 80% by the MEDB.

Sen. Williams closed the hearing on SB 263 by reviewing a list of the Rationale For Removing the Public Hearing Requirements, and asked for the committee's support. (EXHIBIT 3)

CONSIDERATION OF A COMMITTEE BILL PROPOSED BY SEN. CECIL WEEDING: Sen. Weeding explained that the bill he wished to propose should have been drafted, and there were eight or ten small hospitals (or one-time hospitals) who had been led to believe that it had been; however, it was not. The proposed legislation was the result of a recommendation by an interim committee created by the Dept. of Health and the Governor. The committee had done a study and come up with a recommendation that a new medical assistance facility be categorized and created to deal with the need of ultra-small hospitals in less populated communities. It would be a pre-hospital facility which would have a doctor present for several days a week and would require licensing. It would operate under the Health Department. (EXHIBIT A)

EXECUTIVE ACTION ON PROPOSED COMMITTEE BILL AND HOUSE BILL NO. 80: Sen. Weeding made a MOTION that the committee introduce his proposed bill as a Committee Bill. The Motion was Seconded by Sen. Walker and PASSED UNANIMOUSLY.

Sen. Darryl Meyer made a MOTION that the proposed amendments to HB 80 BE ADOPTED. The Motion was Seconded by Sen. Thayer, and it PASSED UNANIMOUSLY.

Sen. Weeding Moved that House Bill No. 80 be CONCURRED IN AS AMENDED and it was Seconded by Sen. Thayer. Discussion of the Motion: Sen. Walker stated that he was not in favor of the bill and that the paper boys were not the same as the correspondents and should not be considered as such. Sen. McLane noted that the way he understands it, the kids buy the paper and then resell it like any other private contractor. Sen. Walker stated that they cannot

sell it for any price they want, but for whatever the paper tells them. Sen. Thayer stated that as he understood it, the paper boys are covered by insurance, and Chairman Kolstad asked Mr. Mike Voeller, Helena Independent Record, to verify that. He stated that they do offer them the supplemental accident type insurance, which covers them 24 hours per day; however, if they choose not to purchase that, they are covered by a policy the newspaper buys which covers them only when they are delivering papers. Sen. Walker asked Mr. Voeller if there were anything in the statutes that obligates the paper to buy the coverage, and Mr. Voeller answered, "No, but as a smart business practice, a paper would provide that." He stated that he felt that was why the newspapers gladly accepted an amendment in the House that would require a parent or guardian to sign an acknowledgement that a paper carrier would not be covered by workmen's compensation. Sen. Thayer asked Mr. Voeller if there were any newspapers that do not offer the coverage for carriers while they are on their routes, and Mr. Voeller answered, not to his knowledge. (Letter opposing HB 80 Rec'd & Read, EXHIBIT B)

The Motion that House Bill No. 80 BE CONCURRED IN AS AMENDED PASSED with Sen. Walker Voting NO.

CONSIDERATION OF HOUSE BILL NO. 254: Representative Fred Thomas, House District 62, Stevensville and chief sponsor of HB 254, explained that the bill essentially sets up cancellation and non-renewal rules and procedures for when an insurance company can terminate a policy. It is putting into law some rules that the insurance industry is following at this time, that have been very good for the insurance consumer in Montana, as well as the insurance agents of Montana. He noted that there would be some amendments proposed which he would like the committee to consider.

PROPOSERS: Kathy Irigoin, Staff Attorney, Legal Unit, State Auditor's Office presented copies of some proposed amendments to HB 254. She noted that the amendments were essentially corrections. Number one changes the reference to the entire chapter of the insurance code. Number two clarifies the effective date of a cancellation of a policy by an insurance company. The third amendment clarifies the language by changing the word "it" to "the notice." The fourth amendment remedies a typographical error, and the fifth amendment clarifies that the information that the insurance company is to deliver has to be delivered to the insured because as it is the bill leaves

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2/13/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. B

DATE 2/13/87

BILL NO. HB 80

February 10, 1987

The Honorable Gary Aklestad
Montana State Senate
Capitol Station
Helena, Montana 59620

Dear Senator Aklestad:

On behalf of our labor federation, I urge you to oppose House Bill 80 when it comes before the Senate for consideration. Because of a conflict in our hearing schedule, we were unable to appear before the Senate Business and Industry Committee when the bill was heard today. Therefore, we are taking this means of communicating our position to all Senate Republicans.

House Bill 80 eliminates legal requirements that workers' compensation protections be paid to newspaper carriers and part-time correspondents. Newspaper carriers, many of whom are children or teenagers, are subjected daily to a variety of hazards that are inherent to their vocation. From being hit by a car to slipping on an icy sidewalk, these injuries may require costly or perhaps catastrophic medical care which should currently be covered by workers' compensation. Children and teenagers cannot be expected to be aware of the high costs of medical care. Thus, under the provisions of House Bill 80, should an injury occur, the burden and responsibility falls on the carriers or their parents, who may not have, or perhaps cannot afford, medical insurance. If parents are unable to provide medical insurance for their children, society would ultimately bear the burden of caring for these injured individuals.

Part-time correspondents are employees of large newspaper companies, and should be entitled to the same workers' compensation coverage given to all other employees. Many of these part-time correspondents may prefer to work full-time, but are unable to do so because full-time work is not available. Nevertheless, newspaper companies, like all other employers, should be responsible for providing a safe and healthful working environment for all their employees. And when injuries occur, it must be the responsibility of these employers to provide the required workers' compensation protections that all other employers must provide.

In this case, the responsibility for providing workers' compensation protection is perhaps greater. In addition to children being unaware of the need for health and accident coverage, many adults in these difficult economic times are compelled to accept these low-paying jobs just to feed their families. Obviously, these workers cannot afford appropriate accident and health insurance.

The Honorable Gary Aklestad
Page Two
February 10, 1987

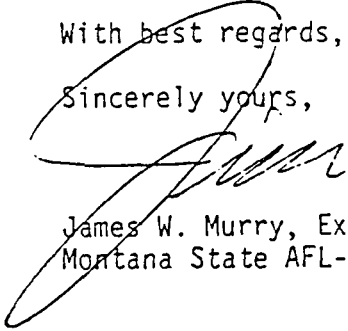
It's not as if these companies do not have the money to pay for this coverage. In the fiscal first quarter of 1987, the Lee newspaper chain reported a profit of almost twenty million dollars. Is it too much to ask for a giant media conglomerate such as the Lee Enterprises to pay workers' compensation premiums to employees earning close to minimum wage?

Please consider protecting these poorly-paid workers, many of whom are children whose parents may not be able to afford such protection. The newspaper industry should treat these employees the same as all other workers.

Thank you for considering our position on this issue.

With best regards, I am

Sincerely yours,



James W. Murry, Executive Secretary
Montana State AFL-CIO

cc: All Senate Republicans

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. B

DATE 2-13-87

STANDING COMMITTEE REPORT

.....February 13,..... 19 37....

MR. PRESIDENT

We, your committee on.....**BUSINESS AND INDUSTRY**.....

having had under consideration.....**HOUSE BILL**..... No. **20**.....

THIRD reading copy (**BLUE**)
color

BROWN (MAZUREK)

**NEWSPAPER CARRIER OR CORRESPONDENT NEED NOT HAVE WORKERS'
COMPENSATION**

Respectfully report as follows: That.....**HOUSE BILL**..... No. **20**.....

be amended as follows:

1. Title, lines 6 through 8.

Following: "CORRESPONDENT"

Strike: remainder of line 6 through "PLAN" on line 8

Insert: "IS NOT COVERED BY THE WORKERS' COMPENSATION ACT UNLESS
THE EMPLOYER ELECTS COVERAGE"

AND AS AMENDED,

BE CONCURRED IN

DO PASS

DO NOT PASS

.....
SENATOR EOLSTAD

.....
Chairman.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. _____

DATE _____

BILL NO. 7680

Amendments to HB 80

1. Title, lines 6 through 8.
Following: "CORRESPONDENT"
Strike: remainder of line 6 through "PLAN" on line 8
Insert: "IS NOT COVERED BY THE WORKERS' COMPENSATION
ACT UNLESS THE EMPLOYER ELECTS COVERAGE"

HOUSE BILL NO. 80

INTRODUCED BY J. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT AN
~~INDEPENDENT--CONTRACTOR--CONTRACTING--WITH--A-NEWSPAPER-AS A~~
NEWSPAPER CARRIER OR ~~PART-TIME~~ FREE-LANCE CORRESPONDENT NEED
~~NOT-ELECT-TO-BE--BOUND--PERSONALLY--AND--INDIVIDUALLY--BY--A~~
~~WORKERS'-COMPENSATION--PLAN~~ IS NOT COVERED BY THE WORKERS'
COMPENSATION ACT UNLESS THE EMPLOYER ELECTS COVERAGE; AND
AMENDING SECTION 39-71-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments
exempted. (1) Except as provided in subsection (2) of this
section, the Workers' Compensation Act applies to all
employers as defined in 39-71-117 and to all employees as
defined in 39-71-118. An employer who has any employee in
service under any appointment or contract of hire, expressed
or implied, oral or written, shall elect to be bound by the
provisions of compensation plan No. 1, 2, or 3. Every
employee whose employer is bound by the Workers'
Compensation Act is subject to and bound by the compensation
plan that has been elected by the employer.

(2) Unless the employer elects coverage for these

employments under this chapter and an insurer allows such an
election, the Workers' Compensation Act does not apply to
any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3)
except employment of a volunteer under 67-2-105;

(c) employment of members of an employer's family
dwelling in the employer's household;

(d) employment of sole proprietors or working members
of a partnership other than those who consider themselves or
hold themselves out as independent contractors and who are
not contracting ~~with-a-newspaper-as-a-newspaper-carrier-or~~
~~part-time-correspondent; or~~ for agricultural services to be
performed on a farm or ranch, or for broker or salesman
services performed under a license issued by the board of
realty regulation, or for services as a direct seller
engaged in the sale of consumer products to customers
primarily in the home;

(e) employment for which a rule of liability for
injury, occupational disease, or death is provided under the
laws of the United States;

(f) any person performing services in return for aid
or sustenance only, except employment of a volunteer under
67-2-105;

(g) employment with any railroad engaged in interstate

1 (h) employment as an official, including a timer,
2 referee, or judge, at a school amateur athletic event,
3 unless the person is otherwise employed by a school
4 district.

5 (3) A sole proprietor or working member of a
6 partnership who holds himself out or considers himself an
7 independent contractor and who is not contracting with a
8 newspaper as a newspaper carrier or part-time correspondent,
9 or for agricultural services to be performed on a farm or
10 ranch, or for broker or salesman services performed under a
11 license issued by the board of realty regulation, or for
12 services as a direct seller engaged in the sale of consumer
13 products to customers primarily in the home must elect to be
14 bound personally and individually by the provisions of
15 compensation plan No. 1, 2, or 3, but he may apply to the
16 division for an exemption from the Workers' Compensation Act
17 for himself. The application must be made in accordance with
18 the rules adopted by the division. The division may deny the
19 application only if it determines that the applicant is not
20 an independent contractor. When an application is approved
21 by the division, it is conclusive as to the status of an
22 independent contractor and precludes the applicant from
23 obtaining benefits under this chapter.

24 (4) Each employer shall post a sign in the workplace
25 at the locations where notices to employees are normally

1 posted, informing employees about the employer's current
2 provision of compensation insurance. A workplace is any
3 location where an employee performs any work-related act in
4 the course of employment, regardless of whether the location
5 is temporary or permanent, and includes the place of
6 business or property of a third person while the employer
7 has access to or control over such place of business or
8 property for the purpose of carrying on his usual trade,
9 business, or occupation. The sign will be provided by the
10 division, distributed through insurers or directly by the
11 division, and posted by employers in accordance with rules
12 adopted by the division. An employer who purposely or
13 knowingly fails to post a sign as provided in this
14 subsection is subject to a \$50 fine for each citation."

15 NEW SECTION. Section 2. Extension of authority. Any
16 existing authority of the division of workers' compensation
17 to make rules on the subject of the provisions of this act
18 is extended to the provisions of this act.

-End-

1 division, distributed through insurers or directly by the
2 division, and posted by employers in accordance with rules
3 adopted by the division. An employer who purposely or
4 knowingly fails to post a sign as provided in this
5 subsection is subject to a \$50 fine for each citation."

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7 existing authority of the division of workers' compensation
8 to make rules on the subject of the provisions of this act
9 is extended to the provisions of this act.

-End-

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